UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA FLORENCE DIVISION

EDDIE D. GEIGER,	Petitioner,)))	C/A No.: 4:12-cv-0603-TMC-TER
VS.))	Report and Recommendation
ANTHONY PADULA,)	
	Respondent.)))	

Petitioner, Eddie D. Geiger (Petitioner), appearing *pro se*, filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254¹ on March 2, 2012. Respondent filed a supplemental motion for summary judgment on March 26, 2013, along with a supplemental return and memorandum.² The undersigned issued an order filed June 26, 2013, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Petitioner of the motion for summary judgment procedure and the possible consequences if he failed to respond adequately. (Doc. #62). Petitioner failed to file a response.

RULE 41(B) DISMISSAL

A complaint may be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute and/or failure to comply with orders of the court. <u>Ballard v.</u>

¹ This habeas corpus case was automatically referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 19.02 (B)(2)(c), DSC. Because this is a dispositive motion, this report and recommendation is entered for review by the district judge.

² On March 6, 2013, the court ordered that Respondent had twenty (20) days to file a subsequent motion for summary judgment addressing Ground Two. (Doc.#42).

Carlson, 882 F.2d 93 (4th Cir. 1989), cert. denied, 493 U.S. 1084 (1990), and Chandler Leasing

Corp. v. Lopez, 669 F.2d 919 (4th Cir. 1982). In considering whether to dismiss an action pursuant

to Rule 41(b), the court is required to consider four factors:

the degree of plaintiff's responsibility in failing to respond;

(2) the amount of prejudice to the defendant;

(3) the history of the plaintiff in proceeding in a dilatory manner; and,

(4) the existence of less drastic sanctions other than dismissal.

Davis v. Williams, 588 F.2d 69 (4th Cir. 1978).

In the present case, the Petitioner is proceeding pro se so he is entirely responsible for his

actions. It is solely through Petitioner's neglect, and not that of an attorney, that no responses have

been filed. Petitioner has not responded to Respondent's supplemental motion for summary

judgment or the court's orders requiring him to respond. No other reasonable sanctions are available.

Accordingly, it is recommended that this action be dismissed pursuant to Fed. R. Civ. Proc. 41(b).

CONCLUSION

As set out above, a review of the record indicates that the petition should be dismissed for

failure to prosecute. It is, therefore,

RECOMMENDED that the petition be dismissed for failure to prosecute pursuant to Fed.

R. Civ. Proc. 41(b) with prejudice.

Respectfully submitted,

September 23, 2013

Florence, South Carolina

s/Thomas E. Rogers, III

Thomas E. Rogers, III

United States Magistrate Judge

The parties' attention is directed to the important information on the attached notice.

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